

1 The opinion in support of the decision being entered
2 today is *not* binding precedent of the Board
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5 UNITED STATES PATENT AND TRADEMARK OFFICE
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8 BEFORE THE BOARD OF PATENT APPEALS
9 AND INTERFERENCES
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12 *Ex parte* JOHN ERIC ARNOLD
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15 Appeal 2006-2834
16 Application 10/069,301
17 Technology Center 3600
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20 Decided: August 23, 2007
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23 *Before:* MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and LINDA E.
24 HORNER, *Administrative Patent Judges.*

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26 CRAWFORD, *Administrative Patent Judge.*
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29 DECISION ON APPEAL
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31 STATEMENT OF CASE

32 Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection
33 of claims 1 to 10. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

34 Appellant invented an airspring having an identification tag non-
35 removably secured between the cylindrical sleeve and a retainer
36 (Specification 1).

Claim 1 under appeal reads as follows:

1. An airspring comprising a flexible cylindrical sleeve having a first and second end, a retainer secured to one of the ends of the sleeve, and a tag made from a sheet material, the improvement comprising:
a portion of the sheet material forming the tag
being non-removably secured between the sleeve and the retainer.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Robinson	US 1,828,682	Oct. 20, 1931
Geno	US 4,798,369	Jan. 17, 1989
Brewster	US 5,148,618	Sep. 22, 1992

The Examiner rejected claims 1-7, 9 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Geno in view of Robinson.

The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Geno in view of Robinson and Brewster¹.

Appellant contends that the prior art does not disclose or suggest a tag being non-removably secured between the sleeve and the retainer (Appeal Br. 5).

¹ The Answer indicates in the statement of the rejections that claims 1-9 are rejected under 35 U.S.C. § 103 as being unpatentable over Geno in view of Robinson. However, in the explanation of the rejection this combination is applied to claims 1-7, 9 and 10 and not to claim 8. In addition, a separate rejection of claim 8 under 35 U.S.C. § 103 as being unpatentable over Geno in view of Robinson and Brewster is made. Therefore, we will assume that the recitation of claims 1-9 in the first rejection is a typographical error and should have been claims 1-7, 9, and 10.

ISSUE

Has Appellant shown that the Examiner erred in finding that Robinson discloses a tag non-removably secured between the sleeve 1 and the retainer 5?

FINDINGS OF FACT

Appellant discloses a tag 12 non-removably secured to an airspring between the sleeve 16 and the retainer 14 by crimping of the retainer about the sleeve end 22 (Specification 2; Figures 1-2).

Geno discloses an air spring (Geno 1:6). Geno does not disclose a tag associated with the air spring.

Robinson discloses a tag 2 indicating the color, quality or other particulars of the contents for a can of paint (Robinson 1:1-5). The tag 2 is attached to the lid 5 of the paint can by passing a tongue of the tag through a slit 6 in the lid 5 (Robinson 1:57-61). The tag 2 is not non-removably secured between the sleeve 1 and the lid or retainer 5 as required by independent claims 1, 9, and 10. Rather, the tag 2 has a tongue that is connected only to the lid through a slit 6 and thus can be removed from the sleeve 1 when the lid 5 is removed to use the paint. In addition, the tag 2 can be removed from the lid 5 when the lid 5 is removed from the paint can by sliding the tongue of the tag 2 out of the slit 6 in the lid 5.

The Examiner relies on Brewster only for its teaching of color coding of identification tags. Brewster does not teach a tag non-removably secured between a sleeve and a lid or retainer.

DISCUSSION

We will not sustain the Examiner's rejection of claims 1-7, 9 and 10 because Robinson does not disclose a tag non-removably secured between the sleeve and retainer or lid and thus, even if combined with Geno, would not render the subject matter of Appellant's claims obvious. Each of independent claims 1, 9, and 10 requires a tag which is non-removably secured between the sleeve and the retainer.

We will also not sustain the Examiner's rejection of claim 8 under 35 U.S.C. §103 as being unpatentable over Geno in view of Robinson and Brewster because claim 8 is dependent on claim 1, and the Examiner's application of Brewster does not cure the deficiencies of the combination of Geno and Robinson noted above.

The decision of the Examiner is reversed.

REVERSED

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